In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1203

CLAUDE CAULEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 355 F. 2d 175.

JURISDICTION

The judgment of the court of appeals was entered January 11, 1966. A petition for rehearing was denied on February 28, 1966. On March 30, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to April 16, 1966, and the peti-

tion was filed on April 11, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence of the place of the crime was sufficient to establish venue.

2. Whether testimony relating to petitioner's past conviction was properly admitted into evidence.

STATEMENT

Petitioner and his son were indicted on six counts of unlawful possession of whiskey without proper tax stamps.[1] After a trial by jury in the United States District Court for the Middle District of Georgia, petitioner was convicted on all counts and sentenced to concurrent terms of imprisonment for a year and a day (R. 94).[2] The court of appeals affirmed *per curiam*.

An agent of the Alcohol and Tobacco Tax Unit testified that on August 9, 1963, he and a paid informer rode out to a house on a dirt road in Irwin County about 2 miles west of Ambrose, Georgia (R. 6).[3] They met petitioner and his son at the house and

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[1] Petitioner's son pleaded guilty before the trial (R. 4).

[2] "R." refers to the record on appeal which is on file with the Clerk of this Court.

[3] The 1966 Rand McNally Commercial Atlas shows that Ambrose is less than two miles east of the Irwin County line. Irwin County is in the Middle District of Georgia whereas Ambrose is in Coffee County within the Southern District.

were told that the latter had the whiskey. Thereupon the group proceeded about 200 yards in the agent's car down a field road where petitioner went into the woods and brought out 117 gallons of whiskey (R. 7-8). The group then loaded the whiskey into the agent's car and the agent observed the informer pay petitioner and his son $491.00 (R. 8).[4]

On August 20, 1963 the agent and his informer purchased 20 gallons of whiskey from petitioner at a barn adjacent to the dirt road described above (R. 10). On both occasions the agent tasted and smelled the whiskey and observed that no tax stamps were affixed to the containers (R. 8, 10).

On cross-examination, the agent testified that he knew that these transactions occurred in Irwin County on the basis of advice from other agents, the informer, and from a study of a county map that hung in his office (R. 27-28, 31). Petitioner moved to strike all of the agent's testimony relating to location as being based on hearsay (R. 28).

ARGUMENT

1. Contrary to petitioner's contention (Pet. 3-5), the proof of venue was sufficient. The agent testified on direct that he met petitioner "on a dirt road in Irwin County, Georgia, about two miles west of Ambrose" (R. 6).[5] He described the location of the first of-

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[4] Petitioner told the informer that he and his son owned the whiskey jointly.

[5] Irwin County is in the Middle District of Georgia. On the east it is adjacent to Ambrose in Coffee County, which is in the Southern District of Georgia.

fense as being on a field road into a scrub pine woods off a county road (R. 6, 7, 23) and the second offense as being at an old barn on the side of the same county road (R. 10, 36). The jury drawn from the district could and did conclude from the description of the location that the offense was committed in Irwin County. See *George* v. *United States*, 125 F. 2d 559, 564 (C.A.D.C.). The facts brought out on cross-examination—that the agent's testimony that the place of meeting was in Irwin County was based on conversations with others and a study of a county map—went to the weight of his testimony and not to its admissibility. The agent's testimony, which was unrefuted, was sufficient to support the jury's verdict. See *Dean* v. *United States*, 246 F. 2d 335, 338 (C.A. 8), and cases cited therein.

2. Petitioner argues that a question put to him on cross-examination relating to a past conviction was improper because it was indefinite (Pet. 4). The question quoted by petitioner was withdrawn. Instead, the government asked petitioner if "in 1950 you were sentenced to serve a year and a day after you plead guilty to violation of the moonshine whiskey laws." He answered in the affirmative (R. 64-65). The question relating to this past felony conviction was definite as to date and sentence. It was properly used for impeachment and was so limited by the court's instruction (R. 89).[6]

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[6] Petitioner raises but does not argue the contention that the judge erred in commenting on the availability of a potential witness, the informer who was with the agent and who was then in jail (Pet. 2, Question IV). The agent

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1966

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was asked on cross-examination whether the informer was present and whether the government did not have the facilities to produce him. The court first stated that either side could get the witness (R. 17), but he immediately corrected this and stated that "the processes of this Court are available to you and the government" (R. 18). This was a correct statement of the law.

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